

HOUSE BILL 1370

P2, P1

(0lr2351)

ENROLLED BILL

— Appropriations and Ways and Means/Budget and Taxation —

Introduced by **Delegates Branch, Gaines, Bohanan, Bronrott, Conway, Haynes, Hixson, and James** **James, Cardin, Howard, Rice, Stukes, and Walker**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this _____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Public-Private Partnerships – Oversight**

3 FOR the purpose of requiring certain State agencies to submit a report concerning a
4 proposed public-private partnership to the State Treasurer and certain
5 committees of the General Assembly at a certain time prior to issuing a public
6 notice of solicitation for the public-private partnership; requiring certain State
7 agencies to submit an annual report concerning public-private partnerships
8 that are under consideration to certain committees of the General Assembly;
9 requiring certain State agencies to submit an annual report concerning existing
10 public-private partnerships to certain committees of the General Assembly;
11 requiring certain units of State government to submit an annual report
12 concerning public-private partnerships for which the unit is providing conduit
13 financing to certain committees of the General Assembly; requiring the State
14 Treasurer to analyze the impact of a proposed public-private partnership

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



1 ~~operating lease agreement~~ on the State's capital debt affordability limits;
 2 requiring the State Treasurer to submit each analysis of a public-private
 3 partnership ~~operating lease agreement~~ to certain committees of the General
 4 Assembly within a certain time; prohibiting the Board of Public Works from
 5 approving a public-private partnership ~~operating lease agreement~~ until certain
 6 committees of the General Assembly have ~~commented~~ had a certain period of
 7 time to review and comment on the State Treasurer's analysis of the ~~lease~~
 8 agreement; requiring that the annual report of the Capital Debt Affordability
 9 Committee include certain information concerning the impact of public-private
 10 partnership ~~operating leases~~; agreements; requiring the Maryland
 11 Transportation Authority to submit a certain analysis of a proposed
 12 public-private partnership agreement to certain committees of the General
 13 Assembly within a certain period of time before entering into the agreement;
 14 prohibiting the Board of Public Works from approving a public-private
 15 partnership agreement that the Authority proposes to enter into until certain
 16 committees of the General Assembly have had a certain period of time to review
 17 and comment on the Authority's analysis of the agreement; establishing a Joint
 18 Legislative and Executive Commission on Oversight of Public-Private
 19 Partnerships; specifying the membership of the Commission; providing for the
 20 chair and staffing of the Commission; prohibiting a member of the Commission
 21 from receiving certain compensation but authorizing a member of the
 22 Commission to receive certain reimbursements; requiring the Commission to
 23 study and make recommendations regarding certain issues; requiring the
 24 Commission to report its findings and recommendations to the Governor and
 25 the General Assembly on or before a certain date; repealing certain provisions of
 26 law requiring the ~~Maryland Transportation~~ Authority to provide certain
 27 information to certain committees of the General Assembly concerning
 28 public-private partnerships; providing that certain committees of the General
 29 Assembly have a certain period of time to review and comment on reports
 30 submitted under this Act; defining certain terms; providing for the termination
 31 of certain provisions of this Act; and generally relating to oversight of
 32 public-private partnerships.

33 BY adding to
 34 Article – State Finance and Procurement
 35 Section 10A-101 and 10A-102 to be under the new title “Title 10A.
 36 Public-Private Partnerships”
 37 Annotated Code of Maryland
 38 (2009 Replacement Volume)

39 BY repealing and reenacting, with amendments,
 40 Article – Transportation
 41 Section 4-205(c)
 42 Annotated Code of Maryland
 43 (2008 Replacement Volume and 2009 Supplement)

44 BY adding to

1 Article – Transportation
 2 Section 4–406
 3 Annotated Code of Maryland
 4 (2008 Replacement Volume and 2009 Supplement)

5 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 6 MARYLAND, That the Laws of Maryland read as follows:

7 **Article – State Finance and Procurement**

8 **TITLE 10A. PUBLIC–PRIVATE PARTNERSHIPS.**

9 **10A–101.**

10 (A) (1) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS
 11 INDICATED.

12 (2) “BUDGET COMMITTEES” MEANS THE SENATE BUDGET AND
 13 TAXATION COMMITTEE, THE HOUSE COMMITTEE ON WAYS AND MEANS, AND
 14 THE HOUSE APPROPRIATIONS COMMITTEE.

15 (3) “PRIVATE ENTITY” MEANS AN INDIVIDUAL, A CORPORATION,
 16 A GENERAL OR LIMITED PARTNERSHIP, A LIMITED LIABILITY COMPANY, A JOINT
 17 VENTURE, A BUSINESS TRUST, A PUBLIC BENEFIT CORPORATION, A NONPROFIT
 18 ENTITY, OR ANOTHER BUSINESS ENTITY.

19 (4) “PUBLIC NOTICE OF SOLICITATION” INCLUDES A REQUEST
 20 FOR EXPRESSIONS OF INTEREST, A REQUEST FOR PROPOSALS, A MEMORANDUM
 21 OF UNDERSTANDING, AN INTERIM DEVELOPMENT AGREEMENT, A LETTER OF
 22 INTENT, OR A PRELIMINARY DEVELOPMENT PLAN.

23 (5) (I) “PUBLIC–PRIVATE PARTNERSHIP” MEANS A SALE OR
 24 ~~LONG TERM LEASE AGREEMENT BETWEEN A CONTRACTING AGENCY UNIT OF~~
 25 STATE GOVERNMENT AND A PRIVATE ENTITY UNDER WHICH:

26 1. THE PRIVATE ENTITY ASSUMES CONTROL OF THE
 27 OPERATION AND MAINTENANCE OF AN EXISTING STATE FACILITY; OR

28 2. THE PRIVATE ENTITY CONSTRUCTS,
 29 RECONSTRUCTS, FINANCES, OR OPERATES A STATE FACILITY ~~AND IS~~
 30 AUTHORIZED TO COLLECT OR A FACILITY FOR STATE USE AND WILL COLLECT
 31 FEES, CHARGES, RENTS, OR TOLLS FOR THE USE OF THE FACILITY.

32 (II) “PUBLIC–PRIVATE PARTNERSHIP” DOES NOT INCLUDE:

1 1. A SHORT-TERM OPERATING SPACE LEASE
 2 ENTERED INTO IN THE ORDINARY COURSE OF BUSINESS BY A UNIT OF STATE
 3 GOVERNMENT AND A PRIVATE ENTITY ~~##~~ AND APPROVED UNDER § 10-305 OF
 4 THIS ARTICLE; ~~OR~~

5 2. A PROCUREMENT GOVERNED BY DIVISION II OF
 6 THIS ARTICLE; OR

7 3. PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS
 8 ENTERED INTO BY THE UNIVERSITY SYSTEM OF MARYLAND, WHERE NO STATE
 9 FUNDS ARE USED TO FUND OR FINANCE ANY PORTION OF A CAPITAL PROJECT.

10 (6) “REPORTING AGENCY” MEANS:

11 (I) THE DEPARTMENT OF GENERAL SERVICES;

12 (II) THE MARYLAND DEPARTMENT OF TRANSPORTATION;

13 (III) THE UNIVERSITY SYSTEM OF MARYLAND;

14 (IV) MORGAN STATE UNIVERSITY;

15 (V) ST. MARY’S COLLEGE OF MARYLAND; AND

16 (VI) THE BALTIMORE CITY COMMUNITY COLLEGE.

17 **(B) THE REQUIREMENTS OF THIS TITLE DO NOT APPLY TO THE**
 18 **MARYLAND TRANSPORTATION AUTHORITY OR TO A PUBLIC-PRIVATE**
 19 **PARTNERSHIP PROPOSED OR ENTERED INTO BY THE MARYLAND**
 20 **TRANSPORTATION AUTHORITY.**

21 ~~(B)~~ (C) (1) THE REPORTS PROVIDED BY THE DEPARTMENT OF
 22 GENERAL SERVICES UNDER THIS SECTION SHALL INCLUDE INFORMATION
 23 CONCERNING ALL PUBLIC-PRIVATE PARTNERSHIPS INVOLVING UNITS WITHIN
 24 THE EXECUTIVE BRANCH OF STATE GOVERNMENT, EXCEPT FOR THOSE UNITS
 25 THAT ARE ALSO REPORTING AGENCIES.

26 (2) FOLLOWING THE SUBMISSION OF EACH OF THE REPORTS
 27 REQUIRED UNDER THIS SECTION, THE BUDGET COMMITTEES SHALL HAVE 45
 28 DAYS TO REVIEW AND COMMENT ON THE REPORTS.

29 ~~(C)~~ (D) (1) NOT LESS THAN 45 DAYS BEFORE ISSUING A PUBLIC
 30 NOTICE OF SOLICITATION FOR A PUBLIC-PRIVATE PARTNERSHIP, A REPORTING
 31 AGENCY SHALL SUBMIT TO THE STATE TREASURER AND THE BUDGET

1 COMMITTEES, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT
2 ARTICLE, A REPORT CONCERNING THE PROPOSED PUBLIC-PRIVATE
3 PARTNERSHIP.

4 (2) BY ~~JULY~~ JANUARY 1 OF EACH YEAR, EACH REPORTING
5 AGENCY SHALL SUBMIT TO THE BUDGET COMMITTEES, IN ACCORDANCE WITH §
6 2-1246 OF THE STATE GOVERNMENT ARTICLE, A REPORT CONCERNING EACH
7 PUBLIC-PRIVATE PARTNERSHIP UNDER CONSIDERATION AT THAT TIME BY THE
8 REPORTING AGENCY THAT HAS NOT BEEN REVIEWED OR APPROVED
9 PREVIOUSLY BY THE GENERAL ASSEMBLY.

10 (3) BY JANUARY 1 OF EACH YEAR, EACH REPORTING AGENCY
11 SHALL SUBMIT TO THE BUDGET COMMITTEES, IN ACCORDANCE WITH § 2-1246
12 OF THE STATE GOVERNMENT ARTICLE, A STATUS REPORT CONCERNING EACH
13 EXISTING PUBLIC-PRIVATE PARTNERSHIP IN WHICH THE REPORTING AGENCY
14 IS INVOLVED.

15 ~~(D)~~ (E) BY ~~JULY~~ JANUARY 1 OF EACH YEAR, A UNIT OF STATE
16 GOVERNMENT THAT PROVIDES CONDUIT FINANCING FOR A PUBLIC-PRIVATE
17 PARTNERSHIP SHALL SUBMIT TO THE BUDGET COMMITTEES, IN ACCORDANCE
18 WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, A REPORT CONCERNING
19 EACH PUBLIC-PRIVATE PARTNERSHIP FOR WHICH THE UNIT IS PROVIDING
20 CONDUIT FINANCING.

21 10A-102.

22 (A) THE STATE TREASURER SHALL ANALYZE THE IMPACT OF EACH
23 PUBLIC-PRIVATE PARTNERSHIP ~~OPERATING LEASE ENTERED INTO~~ AGREEMENT
24 PROPOSED BY A UNIT OF STATE GOVERNMENT ON THE STATE'S CAPITAL DEBT
25 AFFORDABILITY LIMITS.

26 (B) ~~(1)~~ THE STATE TREASURER SHALL SUBMIT TO THE BUDGET
27 COMMITTEES, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT
28 ARTICLE, EACH ANALYSIS REQUIRED UNDER SUBSECTION (A) OF THIS SECTION
29 WITHIN 30 DAYS AFTER THE STATE TREASURER RECEIVES A PROPOSED
30 PUBLIC-PRIVATE PARTNERSHIP AGREEMENT FROM A UNIT OF STATE
31 GOVERNMENT.

32 ~~(2) FOLLOWING THE SUBMISSION OF EACH ANALYSIS, THE~~
33 ~~BUDGET COMMITTEES SHALL HAVE 45 DAYS TO REVIEW AND COMMENT ON THE~~
34 ~~ANALYSIS.~~

35 (C) THE BOARD OF PUBLIC WORKS MAY NOT APPROVE A
36 PUBLIC-PRIVATE PARTNERSHIP ~~OPERATING LEASE UNDER~~ AGREEMENT UNDER

1 **§ 10–305 OR § 12–204 OF THIS ARTICLE UNTIL THE BUDGET COMMITTEES HAVE**
 2 **~~COMMENTED~~ HAD 30 DAYS TO REVIEW AND COMMENT ON THE STATE**
 3 **TREASURER’S ANALYSIS OF THE ~~LEASE~~ AGREEMENT REQUIRED UNDER**
 4 **SUBSECTION (A) OF THIS SECTION.**

5 **(D) THE ANNUAL REPORT OF THE CAPITAL DEBT AFFORDABILITY**
 6 **COMMITTEE REQUIRED UNDER § 8–112 OF THIS ARTICLE SHALL INCLUDE AN**
 7 **ANALYSIS OF THE AGGREGATE IMPACT OF PUBLIC–PRIVATE PARTNERSHIP**
 8 **~~OPERATING LEASES~~ AGREEMENTS ON THE TOTAL AMOUNT OF NEW STATE DEBT**
 9 **THAT PRUDENTLY MAY BE AUTHORIZED FOR THE NEXT FISCAL YEAR.**

10 **Article – Transportation**

11 4–205.

12 (c) (1) Subject to the limitations described in [paragraphs (2) and (3)]
 13 **PARAGRAPH (2)** of this subsection, the Authority may make any contracts and
 14 agreements necessary or incidental to the exercise of its powers and performance of its
 15 duties.

16 (2) Not less than 45 days before entering into any contract or
 17 agreement to acquire or construct a revenue–producing transportation facilities
 18 project, subject to § 2–1246 of the State Government Article, the Authority shall
 19 provide, to the Senate Budget and Taxation Committee, the House Committee on
 20 Ways and Means, and the House Appropriations Committee, for review and comment,
 21 and to the Department of Legislative Services, a description of the proposed project, a
 22 summary of the contract or agreement, and a financing plan that details:

23 (i) The estimated annual revenue from the issuance of bonds to
 24 finance the project; and

25 (ii) The estimated impact of the issuance of bonds to finance the
 26 project on the bonding capacity of the Authority.

27 [(3) (i) 1. In this paragraph the following words have the
 28 meanings indicated.

29 2. “Public notice of procurement” includes a request for
 30 proposals issued by the Authority.

31 3. “Public–private partnership arrangement” means a
 32 lease agreement between the Authority and a private entity under which the private
 33 entity assumes control of the operation and maintenance of an existing or future
 34 revenue–producing highway, bridge, tunnel, or transit facility.

1 (ii) Not less than 45 days before issuing a public notice of
2 procurement related to a public-private partnership arrangement, subject to § 2-1246
3 of the State Government Article, the Authority shall provide, to the Senate Budget
4 and Taxation Committee, the House Committee on Ways and Means, and the House
5 Appropriations Committee, for review and comment, and to the Department of
6 Legislative Services, a summary of the proposed procurement document to be used for
7 solicitation of the public-private partnership arrangement.

8 (iii) Not less than 45 days before entering into any
9 public-private partnership arrangement, subject to § 2-1246 of the State Government
10 Article, the Authority shall provide, to the Senate Budget and Taxation Committee,
11 the House Committee on Ways and Means, and the House Appropriations Committee,
12 for review and comment, and to the Department of Legislative Services, a description
13 of the proposed lease agreement and a financing plan, including:

- 14 1. The length of the proposed lease;
- 15 2. The scope of any toll-setting authority to be granted
16 to the private entity;
- 17 3. The scope of payments to the Authority from the
18 proposed public-private partnership arrangement;
- 19 4. A cost-benefit analysis of the proposed public-private
20 partnership arrangement; and
- 21 5. Requirements pertaining to the ongoing operation and
22 maintenance of the facility and contract oversight.]

23 **4-406.**

24 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
25 MEANINGS INDICATED.

26 (2) "BUDGET COMMITTEES" MEANS THE SENATE BUDGET AND
27 TAXATION COMMITTEE, THE HOUSE COMMITTEE ON WAYS AND MEANS, AND
28 THE HOUSE APPROPRIATIONS COMMITTEE.

29 (3) "PRIVATE ENTITY" MEANS AN INDIVIDUAL, A CORPORATION,
30 A GENERAL OR LIMITED PARTNERSHIP, A LIMITED LIABILITY COMPANY, A JOINT
31 VENTURE, A BUSINESS TRUST, A PUBLIC BENEFIT CORPORATION, A NONPROFIT
32 ENTITY, OR ANOTHER BUSINESS ENTITY.

33 (4) "PUBLIC NOTICE OF SOLICITATION" INCLUDES A REQUEST
34 FOR EXPRESSIONS OF INTEREST, A REQUEST FOR PROPOSALS, A MEMORANDUM

1 OF UNDERSTANDING, AN INTERIM DEVELOPMENT AGREEMENT, A LETTER OF
2 INTENT, OR A PRELIMINARY DEVELOPMENT PLAN.

3 (5) (I) "PUBLIC-PRIVATE PARTNERSHIP" MEANS A SALE OR
4 ~~LONG TERM LEASE AGREEMENT BETWEEN THE AUTHORITY AND A PRIVATE~~
5 ENTITY UNDER WHICH:

6 1. THE PRIVATE ENTITY ASSUMES CONTROL OF THE
7 OPERATION AND MAINTENANCE OF AN EXISTING STATE FACILITY; OR

8 2. THE PRIVATE ENTITY CONSTRUCTS,
9 RECONSTRUCTS, FINANCES, OR OPERATES A STATE FACILITY ~~AND IS~~
10 ~~AUTHORIZED TO COLLECT~~ OR A FACILITY FOR STATE USE AND WILL COLLECT
11 FEES, CHARGES, RENTS, OR TOLLS FOR THE USE OF THE FACILITY.

12 (II) "PUBLIC-PRIVATE PARTNERSHIP" DOES NOT INCLUDE:

13 1. A SHORT-TERM OPERATING SPACE LEASE
14 ENTERED INTO IN THE ORDINARY COURSE OF BUSINESS BY THE AUTHORITY
15 AND A PRIVATE ENTITY ~~IF~~ AND APPROVED UNDER § 10-305 OF THE STATE
16 FINANCE AND PROCUREMENT ARTICLE; OR

17 2. A PROCUREMENT GOVERNED BY DIVISION II OF
18 THE STATE FINANCE AND PROCUREMENT ARTICLE.

19 (B) FOLLOWING THE SUBMISSION OF EACH OF THE REPORTS REQUIRED
20 UNDER THIS SECTION, THE BUDGET COMMITTEES SHALL HAVE 45 DAYS TO
21 REVIEW AND COMMENT ON THE REPORTS.

22 (C) (1) NOT LESS THAN 45 DAYS BEFORE ISSUING A PUBLIC NOTICE
23 OF SOLICITATION FOR A PUBLIC-PRIVATE PARTNERSHIP, THE AUTHORITY
24 SHALL SUBMIT TO THE BUDGET COMMITTEES, IN ACCORDANCE WITH § 2-1246
25 OF THE STATE GOVERNMENT ARTICLE, A REPORT CONCERNING THE PROPOSED
26 PUBLIC-PRIVATE PARTNERSHIP.

27 (2) BY ~~JULY~~ JANUARY 1 OF EACH YEAR, THE AUTHORITY SHALL
28 SUBMIT TO THE BUDGET COMMITTEES, IN ACCORDANCE WITH § 2-1246 OF THE
29 STATE GOVERNMENT ARTICLE, A REPORT CONCERNING EACH
30 PUBLIC-PRIVATE PARTNERSHIP UNDER CONSIDERATION AT THAT TIME BY THE
31 AUTHORITY THAT HAS NOT BEEN REVIEWED OR APPROVED PREVIOUSLY BY THE
32 GENERAL ASSEMBLY.

33 (3) BY JANUARY 1 OF EACH YEAR, THE AUTHORITY SHALL
34 SUBMIT TO THE BUDGET COMMITTEES, IN ACCORDANCE WITH § 2-1246 OF THE

1 STATE GOVERNMENT ARTICLE, A STATUS REPORT CONCERNING EACH
 2 EXISTING PUBLIC-PRIVATE PARTNERSHIP IN WHICH THE AUTHORITY IS
 3 INVOLVED.

4 (D) BY ~~JULY~~ JANUARY 1 OF EACH YEAR, THE AUTHORITY SHALL
 5 SUBMIT TO THE BUDGET COMMITTEES, IN ACCORDANCE WITH § 2-1246 OF THE
 6 STATE GOVERNMENT ARTICLE, A REPORT CONCERNING EACH
 7 PUBLIC-PRIVATE PARTNERSHIP FOR WHICH THE AUTHORITY IS PROVIDING
 8 CONDUIT FINANCING.

9 (E) NOT LESS THAN 30 DAYS BEFORE ENTERING INTO A
 10 PUBLIC-PRIVATE PARTNERSHIP AGREEMENT, THE AUTHORITY SHALL SUBMIT
 11 TO THE BUDGET COMMITTEES, IN ACCORDANCE WITH § 2-1246 OF THE STATE
 12 GOVERNMENT ARTICLE, AN ANALYSIS OF THE IMPACT OF THE PROPOSED
 13 PUBLIC-PRIVATE PARTNERSHIP AGREEMENT ON THE AUTHORITY'S FINANCING
 14 PLAN, INCLUDING THE AUTHORITY'S OPERATING AND CAPITAL BUDGETS AND
 15 DEBT CAPACITY.

16 (F) THE BOARD OF PUBLIC WORKS MAY NOT APPROVE A
 17 PUBLIC-PRIVATE PARTNERSHIP AGREEMENT UNDER § 10-305 OR § 12-204 OF
 18 THE STATE FINANCE AND PROCUREMENT ARTICLE THAT THE AUTHORITY
 19 PROPOSES TO ENTER INTO UNTIL THE BUDGET COMMITTEES HAVE HAD 30 DAYS
 20 TO REVIEW AND COMMENT ON THE AUTHORITY'S ANALYSIS OF THE AGREEMENT
 21 REQUIRED UNDER SUBSECTION (E) OF THIS SECTION.

22 SECTION 2. AND BE IT FURTHER ENACTED, That:

23 (a) There is a Joint Legislative and Executive Commission on Oversight of
 24 Public-Private Partnerships.

25 (b) The Commission consists of the following members:

26 (1) two members of the Senate of Maryland, appointed by the
 27 President of the Senate;

28 (2) two members of the House of Delegates, appointed by the Speaker
 29 of the House;

30 (3) the Secretary of Budget and Management, or the Secretary's
 31 designee;

32 (4) the Secretary of General Services, or the Secretary's designee;

33 (5) the Secretary of Transportation, or the Secretary's designee;

1 (6) the Chancellor of the University System of Maryland, or the
2 Chancellor's designee;

3 (7) the State Treasurer, or the State Treasurer's designee;

4 (8) the Executive Director of the Maryland Stadium Authority, or the
5 Executive Director's designee;

6 (9) the Executive Director of the Maryland Economic Development
7 Corporation, or the Executive Director's designee;

8 (10) the President of the Baltimore City Community College, or the
9 President's designee;

10 (11) the President of Morgan State University, or the President's
11 designee;

12 (12) the President of St. Mary's College of Maryland, or the President's
13 designee; and

14 (13) a representative of the private sector who has experience and
15 expertise in developing public-private partnerships, appointed by the Governor in
16 consultation with the President of the Senate and the Speaker of the House.

17 (c) The Governor shall designate the chair of the Commission.

18 (d) The Department of ~~Budget and Management~~ Transportation,
19 Department of General Services, and the Department of Legislative Services shall
20 provide staff for the Commission.

21 (e) A member of the Commission:

22 (1) may not receive compensation as a member of the Commission; but

23 (2) is entitled to reimbursement for expenses under the Standard
24 State Travel Regulations, as provided in the State budget.

25 (f) The Commission shall:

26 (1) assess the oversight, best practices, and approval processes for
27 public-private partnerships in other states, including the Army Enhanced Use Lease
28 Program;

29 (2) evaluate the statutory ~~definition of~~ definitions of "public notice of
30 solicitation" and "public-private partnership", as enacted by Section 1 of this Act, and
31 recommend any amendments to the ~~definition~~ definitions to enhance ~~its~~ their utility
32 and refine ~~its~~ their scope;

1 (3) make recommendations concerning the appropriate manner of
2 conducting ongoing legislative monitoring and oversight of public-private
3 partnerships, including the following issues:

4 (i) the appropriate time for submission for legislative review of
5 a proposed conceptual plan, a letter of intent, an interim development agreement, a
6 master development agreement, and an operating lease for a public-private
7 partnership;

8 (ii) the need for a State agency to state its justifications for
9 seeking a public-private partnership before issuing a request for proposals or any
10 other solicitation;

11 (iii) the appropriate way to assess the effects of a public-private
12 partnership on the State budget, including the aggregate effect on spending by fund
13 source and revenues;

14 (iv) the need for disclosure of all public-private partnership
15 revenue and expenditure data and assumptions;

16 (v) the need for disclosure of all public-private partnership
17 financing assumptions, including projected return on investment and a cost-benefit
18 analysis; and

19 (vi) the appropriate periods for legislative review and comment;
20 and

21 (4) make recommendations concerning broad policy parameters within
22 which public-private partnerships should be negotiated, which may include the
23 following issues:

24 (i) the processes for reviewing and approving a letter of intent,
25 an interim development agreement, a master development agreement, an operating
26 lease, and a request for qualifications;

27 (ii) the length of a public-private partnership agreement,
28 including ground rent, operating leases, and renewal terms;

29 (iii) noncompete clauses and adverse action clauses;

30 (iv) revenue-sharing;

31 (v) limits on the timing and size of rent, toll, or other revenue
32 source increases;

33 (vi) the use of proceeds from concession agreements;

- 1 (vii) guidelines on minority business enterprise involvement and
2 goals;
- 3 (viii) performance measures that are linked to State payments;
- 4 (ix) the number and timing of appraisals of land and structures;
- 5 (x) green building requirements;
- 6 (xi) structuring public-private partnerships in a manner that
7 preserves and promotes important State policy objectives;
- 8 (xii) contract oversight and remedies for default;
- 9 (xiii) police jurisdiction;
- 10 (xiv) eminent domain;
- 11 (xv) maintenance requirements;
- 12 (xvi) solicitation of public comment regarding proposed
13 public-private partnerships and proposed toll rates or user rates;
- 14 (xvii) methods for developing competitive solicitations for
15 public-private partnerships, including the advisability of establishing a special fund to
16 reimburse a private entity for predevelopment expenses;
- 17 (xviii) the role of the Maryland Economic Development Corporation
18 or other State entities in the issuance of tax increment financing bonds,
19 tax-exempt financing, or other conduit financing;
- 20 (xix) the effect on the State workforce of requiring a private entity
21 to give a hiring preference to State employees;
- 22 (xx) a policy on foreign ownership of State assets and
23 requirements to meet conditions of the Committee on Foreign Investment in the
24 United States;
- 25 (xxi) the transition and process for the return of assets to State
26 control at the conclusion of a public-private partnership agreement;
- 27 (xxii) the time period for assignment of a lease or sale of facilities
28 without requiring State consent or providing the State the right of first refusal; and
- 29 (xxiii) the advisability of considering unsolicited public-private
30 partnership proposals.

1 (g) On or before December 1, 2011, the Commission shall report its findings
 2 and legislative recommendations concerning the issues outlined in subsection (f) of
 3 this section for consideration during the 2012 regular session of the General Assembly
 4 to the Governor and, in accordance with § 2-1246 of the State Government Article, the
 5 General Assembly.

6 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
 7 June 1, 2010. Section 2 of this Act shall remain effective for a period of 2 years and 1
 8 month and, at the end of ~~May 31, 2012~~ June 30, 2012, with no further action required
 9 by the General Assembly, Section 2 of this Act shall be abrogated and of no further
 10 force and effect.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.